

REMARKS

Claims 34-45 are pending in the application. Claims 34-45 have been rejected by the Examiner.

Claim Rejections – 35 U.S.C. § 102(b)

Independent claims 34 and 41 have been rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,423,827 to Mumme.

Both claim 34 and claim 41 call for a combination including "a movable tube" and "a retractable nail at least partially positioned within said tube, ... said nail being adapted to be urged to a position such that an end of said nail extends beyond said bottom surface of said body."

Mumme discloses pins 54, 56 positioned within plate 12, as shown in Figure 4. The pointed ends of pins 54, 56, can be "withdrawn in the base 12 and then pushed into the bone when the jig is in the desired position." (Col. 3, Lines 1-9). Mumme completely fails to disclose a movable tube with pins 54, 56 being "at least partially positioned within said tube," as required by claims 34 and 41.

According to the Office Action, jig 10 of Mumme having a guide pin 118 positioned within housing 114 of drill guide 84 discloses the limitations of claims 34 and 41. However, as shown in Figure 5, guide pin 118 of Mumme is "press fit into the central bore 94 in the body 12 and holds the drill guide [84] in the body or plate 12" (Col. 3, Lines 39-43). A surgeon can reposition drill guide 84 by grasping rim 124 of housing 114 and pulling housing 114 away from body 12, thereby compressing compression spring 116 between housing 114 and guide pin 118 (Col. 3, Lines 48-58). Mumme does not disclose that guide pin 118 is adapted to be urged to a position such that an end of guide pin 118 "extends beyond said bottom surface of said body," as required by claims 34 and 41.

Because Mumme does not disclose each and every limitation of independent claims 34 and 41, Applicants respectfully request withdrawal of the 35 U.S.C. § 102(b) rejection of independent claims 34 and 41 and claims 35-37 and 42 depending therefrom, respectively.

Claim Rejections – 35 U.S.C. § 103(a)

Dependent claims 38-40 and 43-45 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Mumme. By virtue of their dependency on independent claims 34 and 41, Applicants respectfully request withdrawal of the 35 U.S.C. § 103(a) rejection of dependent claims 38-40 and 43-45.

Final Remarks

Applicants respectfully submit that claims 34-45 are in condition for allowance. Such action is earnestly solicited.

In the event Applicants have overlooked the need for an extension of time or payment of fee, Applicants hereby petition therefore and authorize that any charges be made to Deposit Account No. 02-0385, Baker & Daniels LLP.

If any questions concerning this application should arise, the Examiner is encouraged to telephone the undersigned at 317-237-1130.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jamie M. Drewry". The signature is fluid and cursive, with a large loop at the end.

Jamie M. Drewry
Registration No. 61,320

Attorney for Applicants

BAKER & DANIELS LLP
300 North Meridian Street
Suite 2700
Indianapolis, Indiana 46204
Telephone: 317-237-1130
Facsimile: 317-237-1000